

REMARKS

This amendment is in response to the Advisory Action May 20, 2010. Claim 5 has been amended, no claims have been canceled, and no claims have been added; as such, claims 1-8 are now pending in this application. Claims 1, 4 and 7-12 are independent claims.

I. Rejection of claims 5-8 under 35 U.S.C. § 103(a)

Claim 5 has been rejected under 35 U.S.C. § 102(b) as being anticipated by Gropper et al (US 5,540,220, hereinafter referred to as "Gropper '220") or in the alternative under 35 U.S.C. § 103 (a). Applicant respectfully traverses this rejection.

Foremost, in the Examiner's Interview dated December 14, 2009, the Examiner has indicated that if the term "corresponding to" in line 11 be changed to -- based upon -- claim 5 would be allowable over Gropper '220. In the Advisory Action of May 30, 2010, the Examiner indicates the "corresponding to" language makes that claim vague and must be corrected. Accordingly, Applicant has amended the claim to comply with the Examiner's recommendation.

Claims 6 and 7 depend from and thus incorporate the features of claim 5, which is neither disclosed nor suggested by Gropper '220, for the reasons stated above.

Claim 8 depends from and thus incorporates the features of claim 5, which is neither disclosed nor suggested by Gropper '220, for the reasons stated above.

II. Double Patenting Rejection

Claims 1-8 have been provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of co-pending Application No. 10/569,463. Applicant traverses this rejection.

The Final Office Action of January 20, 2010 admits that the conflicting claims are not identical (page 5, last paragraph), and explains that the instant claim 1 does not include the structural element of the exhaust means or pressure measuring means as in the co-pending claim 8.

The Office Action further states that the structural elements [of claim 1] are included in the co-pending claim 8. This is totally inaccurate.

Claim 8 of the co-pending application is dependent from claim 5, which is dependent from claim 3, which is dependent from claim 1. Thus claim 8 include all the limitations of claims 1, 3 and 5.

MPEP§2141 III states as follows:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396. (Emphasis added.)

The Examiner has NOT indicated any reasoning that underpinning the double patenting rejection to support the conclusion that claims as to that the invention defined in claim 1 of this application is anticipated by, or would have been an obvious variation of, the invention in the co-pending application claim 8.

III. Conclusion

In view of the above amendment and remarks, applicant believes the pending application is in condition for allowance.

This response is believed to be a complete response to the Office Action. However, Applicant reserves the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers. Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicant expressly does not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

IV. Extensions of time

Please treat any concurrent or future reply, requiring a petition for an extension of time under 37 C.F.R. §1.136, as incorporating a petition for extension of time for the appropriate length of time.

The Commissioner is hereby authorized to charge all required fees, fees under 37 C.F.R. §1.17, or all required extension of time fees.

V. Fees-general authorization

The Commissioner is hereby authorized to charge any deficiency in fees filed, asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm).

If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

Dated: June 15, 2010

Respectfully submitted,

By 
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